

**FOR RECORDING INFORMATION**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
JOURNEY'S END SUBDIVISION**

THIS DECLARATION is made on the date hereinafter set forth by Merlin Pointe, LLC an Idaho limited partnership, hereafter referred to as "Declarant."

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property in Ada County, State of Idaho, hereinafter referred to as the "Properties," more particularly described as follows:

JOURNEY'S END SUBDIVISION No. 3, Lots 30-53, Block 1; Lots 1-13, Block 2; Lots 1-7 Block 3, Lots 1-2 Block 4 according to the official plat thereof, filed in Book 121 of Plats at Pages 19117 through 19120, and recorded November 4, 2021, as Instrument No. 2021-159170, records of Ada County, Idaho; and

WHEREAS, Declarant desires to subject the above-described Properties to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Properties and their present and subsequent owners as hereinafter specified, and will convey the Properties subject thereto;

NOW, THEREFORE, Declarant hereby declares that all of the Properties above described shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the Properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part thereof, and shall inure to the benefit of each Owner thereof.

**ARTICLE I: DEFINITIONS**

The following terms shall have the following meanings:

Section 1. "ARCHITECTURAL CONTROL COMMITTEE" shall mean the committee to be appointed pursuant to Article IX, Section 1, below.

Section 2. "ASSESSMENT" shall mean a payment required of Association members, including Initiation, Transfer, Annual, Special, Limited Assessments and Townhome Driveway Assessments as provided for in this Declaration.

Section 3. "ASSOCIATION" shall mean and refer to JE Homeowners Association, Inc., a non-profit corporation organized under the laws of the State of Idaho, its successors, and assigns.

Section 4. "BOARD" shall mean and refer to the Board of Directors of the Association.

Section 5. "BUILDING LOT" a lot intended for the construction of a Residential Structure thereon.

Section 6. "COMMON AREA" shall mean all real property and improvements thereon owned by the association for the common use and enjoyment of the Owners. The initial Common Area to be owned by the association is described as Lot 30, Block 1, Lot 7, Block 2, Lot 7, Block 3 and Lot 1, Block 3 of Journey's End Subdivision No. 3, according to the official plat thereof.

Section 7. "DECLARANT" shall mean and refer to Merlin Pointe, LLC an Idaho limited partnership, and subject to the provisions of Article XIII, Section 5, its successors, heirs and assigns.

Section 8. "DECLARATION" shall mean and refer to this Declaration of Covenants Conditions and Restrictions as the same may be amended from time to time.

Section 9. "DWELLING UNIT" shall mean that portion or part of any Residential Structure intended to be occupied by one family as a dwelling unit, together with the adjoining vehicular parking garage, if any, and all projections therefrom.

Section 10. "IMPROVEMENT" shall mean any structure, facility or system, or other improvement or object, whether permanent or temporary, which is erected, constructed or placed upon, under or in any portions of the Properties, including, landscaping, signs (including but not limited to any subdivision identification signs, private street signs, and no parking signs), lights, mailboxes, electrical lines, pipes, pumps, dishes, waterways, recreational facilities, and fixtures of any kind whatsoever.

Section 11. "LOT" or "LOTS" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties.

Section 12. "MEMBER" shall mean a member of the Association as set forth in this Declaration.

Section 13. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities of the fee simple title to any Building Lot which is part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "PLAT" shall mean a final subdivision plat covering any real property and Journeys End Subdivision, as recorded in the Office of the County Recorder, Ada County, Idaho, as the same may be amended by duly recorded amendments thereto. "Plat" shall also mean a final subdivision plat covering any additional real property which may be annexed into the subdivision project described herein pursuant to the provisions of Article XII, below.

Section 15. "PROPERTIES" shall mean and refer to that certain real property hereinabove described and any additional real property annexed pursuant to the provisions of Article XII, below.

Section 16. "RESIDENTIAL STRUCTURE" shall mean and refer to any structure intended for residential occupancy.

Section 17. "SUBDIVISION" shall mean Journey's End Subdivision as shown on the final plat recorded in the Office of the County Recorder, Ada County Idaho. "Subdivision" shall also include any additional real property shown on the final plat which is annexed into the subdivision project described herein pursuant to the provisions of Article XII, below.

## **ARTICLE II: PROPERTY RIGHTS**

Section 1. Enjoyment of Common Area: Each Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

A. The right of the Association to levy reasonable assessments for the maintenance of the Common Area and any improvements or facilities located thereon as set forth herein below.

B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Owners.

C. The right of the Board to promulgate reasonable rules and regulations governing the right of use of the Common Area by the Owners, from time to time, in the interest of securing maximum safe and fair usage thereof, without unduly infringing upon the privacy or enjoyment of any Owner or occupant of a Lot, including without being limited thereto, reasonable regulations and restrictions regarding vehicle parking thereon.

D. Any and all easement rights granted to the Owners or reserved to the Declarant in this Declaration.

Section 2. Delegation of Use: any Member may delegate, in accordance with the rules and regulations adopted from time to time by the Board, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants or contract purchasers, provided the persons to whom such rights are delegated reside on the property at the time of use.

Section 3. Rights Reserved by the Declarant: notwithstanding anything to the contrary contained in this Declaration, Declarant expressly reserves unto:

A. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees, easements and rights-of-way on, over and across all or any part of the Common Area for vehicular and pedestrian ingress and egress to and from any part of the Properties, or any adjacent real property owned by Declarant, or its successors or assigns, while the Properties are under construction and until the Declarant has sold all Lots;

B. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees (including any district, company, unit of local government, association, or other entity providing water, sewer, gas, oil, electricity, telephone, cable television, or other similar services), easements, access and rights-of-way on, over, under and across all or part

of the Common Area and utility easements on, over and under all Lots and Common Area as provided on any recorded Plat of the Properties for installation, use, maintenance and repair of all lines, wires, pipes, pumps, water wells, facilities, and other things necessary for all such services, provided that any installation, maintenance or repair of such lines, wires or pipes shall be performed with reasonable care and that the surface of said easement area, including without limitation any concrete and/or pavement located thereon, shall be restored to the level and condition that existed prior to the doing of work; and

C. Itself, its employees, successors, assigns, agents, representatives, contractors and their subcontractors and employees, the right to use the Common Area where applicable, to facilitate and complete the development of the Properties, and any annexed property, including without limitation the use of the Common Area where applicable, for:

1. Construction, excavation, grading, landscaping, parking and/or storage;
2. Maintenance and operation of a sales office and model units for sales purposes;
3. The showing to potential purchasers of any unsold Lot, unit or improvements within the Properties;
4. Display of signs and flags to aid in the sale of any unsold Lots and Residential or Townhome Structures, or all or part of the Properties;
5. Construction, operation and maintenance of all or any portion of any Common Area by Declarant, its successors or assigns;

Section 4. Right to Amend Declaration: Declarant reserves the right to amend this Declaration in accordance with the provisions of Article XIII, Section 4, below.

Section 5. Reservation of Development Rights: No provision of this Declaration shall be construed as to prevent or limit Declarant's right to complete development of the Properties and to construct Improvements thereon, nor Declarant's right to maintain model homes, construction, sales or leasing offices or similar facilities on any portion of the Properties, nor Declarant's right to post signs incidental to construction, sales, or leasing. Any development plans or schemes for the Properties in existence prior to or following the effective date of this Declaration are subject to change at any time by Declarant and impose no obligation on Declarant as to how the Properties are to be developed or improved.

Section 6. Power to Grant Common Area Use Rights. Declarant hereby reserves to itself the right and power to grant to the owners of other properties it may designate in a written notice to the Association the right to use and enjoy the Common Area, or any portion thereof, and any improvements and recreational facilities located thereon, on such terms and conditions as Declarant may in its sole discretion determine; provided that if Declarant elects to do so, Declarant shall establish a mechanism whereby any such property owners, or an association of such property owners, are bound to contribute toward the costs of operation and maintenance of such Common Area and improvements in such amount or proportion as Declarant shall determine. If Declarant elects to exercise the powers described herein, the Association and all Members and Owners shall be bound to honor and recognize

any such use rights and the terms and conditions upon which such rights have been granted notwithstanding that those to whom such rights have been granted are not Members of the Association or Owners as those terms are defined in this Declaration; and neither the Association nor any Member nor any Owner shall have the power or authority to (i) terminate, modify, diminish or otherwise interfere with such use rights except to the extent that Declarant may so empower the Association and/or the Owners or Members; (ii) discriminate against any persons to whom such use rights have been granted as to the time or manner in which such rights may be exercised, it being the intent of the Declarant that, unless Declarant shall otherwise provide, such use rights shall in all respects be equal and indistinguishable from the rights of the Members and Owners. The reservation of Declarant's right as set forth in this Section 6 may be exercised by Declarant for so long as Declarant shall own any Building Lot which is subject to this Declaration.

### **ARTICLE III: OWNERS ASSOCIATION**

Section 1. Membership: Every Owner of a Building Lot which is subject to this Declaration shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Building Lot. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person becoming such Owner and shall automatically terminate and lapse when such ownership in said Building Lot shall terminate or be transferred.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

CLASS A: Class A Members shall be all Owners, with the exception of the Declarant. The Class A Members shall be non-voting Members of the Association until such time as voting rights of the Class B Member(s) expire, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Building Lot owned and when more than one (1) person holds an interest in a Building Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Building Lot owned by a Class A Member(s).

CLASS B: Class B Members shall be the Declarant, and its successor(s) in title to which successor the Declarant has specifically granted such Class B voting rights in writing; provided, that if such voting rights are not so granted, such successor shall be considered to be a Class A Member with respect to each Building Lot owned. The Class B Members shall be entitled to one (1) vote for each Building Lot owned. The Class B membership and the Class B voting rights shall be converted to Class A membership when the Declarant (or its successors in title to whom the Declarant has granted the Class B voting rights, as above provided) no longer owns a Lot within the Subdivision.

The foregoing notwithstanding, in the event any additional real property owned by Declarant shall be annexed into the subdivision project described in this Declaration pursuant to the provisions of Article XII, below, the Class B membership shall not be deemed to have converted to Class A membership pursuant to subparagraph A, above, and the Class B membership shall remain in existence (or be deemed reinstated if previously converted to Class A membership) as respects all Lots owned by Declarant.

Section 3. Assessments: Each Owner of any Lot, by acceptance of a deed therefore from Declarant (whether or not it shall be so expressed in such deed), is deemed to covenant, and agree to pay to the Association an Initiation Assessment, Transfer Assessment, Annual Assessments, Special Assessments, Limited Assessments, and if applicable Townhome Driveway Assessment, such assessments to be fixed, established and collected from time to time as hereinafter provided:

A. Initiation and Transfer Assessments: Upon the initial conveyance by Declarant the purchaser thereof shall pay an Initiation Assessment to the Association in the amount of \$500.00; and upon each subsequent transfer of each Building Lot, the purchaser thereof shall pay a Transfer Assessment to the Association in the amount of \$375.00.

B. Annual Assessments: The Annual Assessment levied by the Association shall be used for the purpose of promoting the recreation, health, safety and welfare of the Owners, for the operation, maintenance, repair and improvement of the Common Area and Improvements located thereon (including, without limitation, any recreational facilities located thereon), for the reasonable expenses incurred in the operation of the affairs of the Association, for the expenses incurred by the Association in connection with any of its obligations contained in this Declaration (including, without limitation, the expenses incurred in maintaining the parking lot as set forth in Article IV, Section 4 below and the landscaping improvements and building exteriors as set forth in Article VI, Section 1, below) or in the Bylaws of the Association, for a reasonable and adequate reserve fund for the performance of the Association's obligations, including without limitation, the maintenance, repair and replacement of the Common Areas and Improvements thereon to be established from time to time by and in the discretion of the Board and for any other purpose reasonably authorized by the Board. The initial amount of the Annual Assessment against each Building Lot shall be \$375.00. In addition to the Initiation Assessment set forth above, the then-current Annual Assessment, adjusted according to the number of months remaining in the calendar year, shall be payable by the purchaser thereof at the closing of the initial sale by Declarant of each Building Lot. The Board shall thereafter fix the amount of the Annual Assessment against each Building Lot at least thirty (30) days in advance of each calendar year. The Annual Assessment shall be payable to the Association without demand in installments at such intervals as may be determined by the Board. The due dates shall be established by the Board and if not so established, such Assessment shall be due on January 1 of each calendar year. Failure of the Board to fix the amount of the Annual Assessment or to deliver or mail to each Owner a notice thereof, shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay the Annual Assessment. In such event, each Owner shall continue to pay the Annual Assessment last established by the Board until a new assessment amount is established.

C. Special Assessments: In addition to the Initiation, Transfer and Annual Assessments authorized above, the Board may levy a Special Assessment, payable over such period of time as the Board shall reasonably determine, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an improvement upon the Common Area, or for any unanticipated expenses or obligations, provided that any such assessment intended to pay the cost of initial construction of any new facility or improvement shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a regularly scheduled meeting or a special meeting duly called for this purpose. Written notice of any meeting at which any action authorized under this paragraph above is anticipated, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all

the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Any Special Assessment shall be payable over such a period as the Board shall determine.

D. Limited Assessments: The Association shall have the power to incur expenses for the maintenance and repair of any Lot or Improvement, for the repair of damage to the Common Area caused by the negligence or willful misconduct of an Owner or his family, guests, invitees, agents, employees, or contractors, or for the correction of any violation of this Declaration, including monetary penalties therefore as set forth in Article XIII, Section 1, below, if the responsible Owner has failed or refused to perform such maintenance or repair or to correct such violation after written notice of the necessity thereof has been delivered (as set forth hereinbelow) by the Board to the responsible Owner. The Board shall levy a Limited Assessment against the Owner to reimburse the Association for the cost of such maintenance, repair or corrective action, together with any other cost or expense, including attorney's fees, arising out of or incident to such maintenance, repair, or corrective action or the collection of the assessment therefore. Any such Limited Assessment shall be due within thirty (30) days of the date written notice thereof is delivered (as set forth hereinbelow) to the responsible Owner. The notices required in this paragraph shall be delivered personally to such Owner or sent by first-class or certified mail to the last known address of such Owner as shown on the records of the Association.

E. Townhome Driveway Assessment: In addition to the Annual Assessment levied by the Association, the Owners of Lots 33-39, Block 1, Lots 41-48, Block 1 and Lots 50-53, Block 1 (collectively "Townhome") shall be assessed a fee for the private driveways identified as Lots 31, 40, and 49 of Block 1 as recorded on November 4, 2021, Instrument No. 2021-159170, records of Ada County, Idaho. Such assessment funds shall be utilized for the reasonable expenses incurred for the maintenance, operation, repair, and improvement of the private driveways. The initial amount of the Townhome Driveway Assessment against each Townhome Owner shall be \$125.00. In addition to the initial Townhome Driveway Assessment set forth above, the then-current Townhome Driveway Assessment, adjusted according to the number of months remaining in the calendar year, shall be payable by the purchaser thereof at the closing of the initial sale by Declarant of each Building Lot. The Board shall thereafter fix the amount of the Townhome Driveway Assessment against each Townhome at least thirty (30) days in advance of each calendar year. The Townhome Driveway Assessment shall be payable to the Association without demand in installments at such intervals as may be determined by the Board. The due dates shall be established by the Board and if not so established, such Townhome Driveway Assessment shall be due on January 1 of each calendar year. Failure of the Board to fix the amount of the Townhome Driveway Assessment or to deliver or mail to each Townhome Owner a notice thereof, shall not be deemed a waiver, modification, or a release of any Townhome Owner from the obligation to pay the Annual Assessment. In such event, each Townhome Owner shall continue to pay the Townhome Driveway Assessment last established by the Board until a new assessment amount is established.

F. Uniform Rate of Assessment: The Initiation, Transfer, Annual and Special Assessments (but not Limited Assessments) must be fixed at a uniform rate for non-exempt Lots.

G. Creation of Lien and Personal Obligation of Assessments: The Initiation, Transfer, Annual, Special and Limited Assessments, together with interest, late fees, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such Assessment is made. Each such Assessment, together with interest, late fees, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed but shall not be a personal obligation of successors in title, unless expressly assumed.

H. Effect of Nonpayment of Assessments; Remedies of Association: Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum and the Owner shall be subject to a late fee equal to five percent (5%) of the unpaid Assessment. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot. The provisions of this Paragraph G shall be in addition to any other enforcement rights of the Association, including, without limitation, the Association's right to suspend voting rights as set forth in Section 5 of this Article III, below.

I. Certificate of Payment: The Association shall, upon written demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance unless corrected within ten (10) days.

J. Exempt Property: The following property, subject to this Declaration, shall be exempt from the Assessments created herein:

1. All Lots and other property expressly dedicated to and accepted by a local public authority;
2. All Lots and other property owned by the Association;
3. All Lots and other property owned by Declarant, until title is transferred to another, or until occupancy, whichever occurs first.

In lieu of paying Annual Assessments, Declarant will contribute, in a timely manner, nonrefundable monies to the Association in order to support budgeted or previously agreed to operating costs (excluding any amount for reserves) in excess of current Association operating revenues, so long as Declarant owns any lots; Provided, however, that Declarant's obligations hereunder shall, at the Declarant's option, cease at such time as Declarant's Class B membership shall be converted to Class A membership as set forth in Section 2 above, or Declarant elects, by written notice to the Association to pay Annual Assessments pursuant to the provisions of this section three.

Section 4. Management: The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Association's Articles of Incorporation and Bylaws, as the same may be amended from time to time.



Section 5. Powers of Association: the Association shall have all powers of a nonprofit corporation organized under the laws of the state of Idaho, subject only to such limitations as are expressly set forth in the Association's Articles of Incorporation and Bylaws or this Declaration. it shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Association's Articles of Incorporation and Bylaws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident 2, the proper management and operation of the Common Areas and the performance of other responsibilities set forth in this Declaration. Without intending to limit the foregoing, the Association shall have the following powers:

- A. The power to levy and collect assessments as set forth in this Declaration.
- B. The power to enforce this Declaration on its own behalf, or on the behalf of any Owners, who consent thereto, and to maintain actions and suits to restrain and enjoy any breach or threatened breach of the Association's Articles of Incorporation and By Laws, this declaration or any rules or regulations adopted by the Board.
- C. The power to enforce penalties as more specifically provided in this Declaration.
- D. The power to adopt, amend, and repeal such rules and regulations as the Board deems reasonable and necessary as more particularly set forth in this Declaration.
- E. The power to employ such agents an independent contractor of the Board deems reasonable and necessary including, without limitation, attorneys, accountants and managers, on such terms and conditions as the Board may determine.
- F. The power to suspend the voting rights of an owner for any period during which any assessment against the Lot remains unpaid; and for a period not to exceed ninety (90) days for each infraction of any of its published rules and regulations.

Section 6. Management Agreement: Declarant, for so long as it owns any Lots, and the Association thereafter, shall have the right, power and authority to enter into an agreement with a qualified management company to provide management services to the Association, which services may include, without limitation, general management of the affairs of the Association, maintenance of the Common Areas and facilities located thereon, performance of any other obligation or responsibility of the Association set forth in this Declaration or in the Bylaws of the Association, and the operation and management of tenant-occupied Dwelling Units. Any such agreement shall be subject to such terms and conditions as Declarant or the Association, as the case may be, shall determine are appropriate in the sound exercise of their business judgment, and may have a term of up to two (2) years. In the event any such management agreement shall include provisions for the operation and management of tenant-occupied Dwelling Units, no Owner may either self-manage such Dwelling Units it owns or contract with or otherwise engage any other person, firm or company to provide such services, but shall be obligated to utilize the services of the management company with whom Declarant or the Association has contracted. The fees or other compensation to be paid any management company with whom the Declarant or Association has contracted shall be paid as follows: (a) by the Association for the management of the affairs of the Association, for the maintenance of the Common Areas and facilities located thereon, and for the performance of any other obligations or duties of the Association set forth in this Declaration or the Bylaws of the Association; or (b) by the Owner for the operation and management of tenant-occupied Dwelling Units owned by the participating Owner.

Section 7. Duties of Association: In addition to the duties delegated to it by the Association's Articles of Incorporation and Bylaws and this Declaration, without limiting the generality thereof, the Association or its authorized agents shall have the obligation to conduct all business affairs of the Association and to perform each of the following duties:

A. Perform, or provide for the performance of, the operation, maintenance and management of the Common Areas and Improvements located thereon, and any other operation, maintenance and repair obligations set forth in this Declaration.

B. To obtain and maintain for the Association the policies of insurance set forth in Article X of this Declaration.

C. Maintenance of an adequate reserve fund for the performance of its obligations, including the maintenance, repairs and replacement of the Common Areas and Improvements located thereon, the landscaping improvements and building exteriors located on Building Lots, and any other Improvements and facilities which the Association is obligated to operate, maintain and/or repair.

Section 8. Liability of Board Members and Officers: Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officers, a manager or any other representative or employee of the Association, provided that said Board member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct.

#### **ARTICLE IV: EASEMENTS**

Section 1. General Drainage and Utility Easements: This Declaration shall be subject to all easements heretofore or hereafter granted and conveyed by Declarant for the installation and maintenance of utilities and drainage facilities and other easements that may be set forth on the Plat, or as may be required for the development of the Properties. In addition, Declarant hereby reserves to itself and for the benefit of the Association the right to grant additional easements and rights-of-way over the Properties, as appropriate, to utility companies and public agencies as necessary or expedient for the proper development of the Properties until the close of escrow for the sale by Declarant of the last Lot in the Properties to a purchaser.

Section 2. Specific Easements for Drainage Facilities: Drainage for the Properties, including Common Area and Building Lots, is provided by a system of area drains, seepage beds and sand and grease traps constructed in the locations depicted on the construction plans for the project, the purpose of which is to collect, store and dispose of drainage waters. from the Building Lots and Common Area. The Association shall be responsible for the operation, maintenance and repair of the area drains, seepage beds and associated facilities, the cost of which shall be included in the Annual and, as necessary, Special Assessments levied by the Association. In the event the surface area of any Lot is disturbed as a result of any maintenance and repair activities, the same shall be restored to the condition in which it existed prior to such repair and maintenance activity as soon as reasonably practical after completion of such repair or maintenance activity.

Section 3. Improvement of Drainage and Utility Easement Areas: The Owners of Lots are hereby restricted and enjoined from constructing any Improvements upon any drainage or utility easement areas as shown on the Plat or otherwise designated in any recorded document which would interfere with or prevent the easement from being used for such purpose.

Section 4. Pedestrian Access: Pedestrian access to each Lot shall be provided by sidewalks and pathways to be constructed on Lot 30, Block 1, Lot 7, Block 2, Lot 1, Block 3 of Journey's End Subdivision No. 3. Declarant hereby declares, grants and conveys a permanent pedestrian access easement over the said sidewalks and pathways, for the benefit of all Owners, providing perpetual and indefeasible access rights for pedestrian ingress and egress to the said Lots. It is the intent of the Declarant that the easements so created shall run with the land and not be sold or conveyed separately from the Lots taking access over them. The perpetual right of ingress and egress over and upon said sidewalks may not be terminated nor extinguished without the written consent of all Owners, the Association, the Declarant for so long as it owns any Lot subject to this Declaration, and any and all parties having any interest in the Properties. The Association shall be responsible to operate, maintain, repair and replace the said sidewalks and pathways, the cost of which shall be included in the Annual and Special Assessments, as applicable, levied against all Lots. The provisions of this Section 5 are not intended to create, nor shall it be in any way interpreted or construed to create any third-party beneficiary rights in any person who is not an Owner, user, or occupant of a Lot.

Section 5. Easements for Encroachments: If any part of an Improvement on the Common Area encroaches or shall hereafter encroach upon any Lot or Lots, a permanent easement for such encroachment and for the maintenance of the same is hereby declared to exist, provided that such encroachment shall not having been willfully caused to exist. If any part of an Improvement encroaches or shall hereafter encroach upon the Common Area or upon any adjoining Lot or Lots, an easement for such encroachment and for the maintenance of the same is hereby declared to exist, provided that such encroachment shall not having been willfully caused to exist. Such encroachments shall not be considered to be encumbrances either on the Common Area or the Lots. Encroachments referred to herein shall include, without limitation, encroachments caused by engineering or surveying errors; settling, rising, or shifting of the earth; changes in position caused by construction, repair or reconstruction of any Improvements in accordance with approved plans; any encroachment due to any building overhangs or projections (including, without limitation, eaves, entry covers, porches, steps, stoops, decks, balconies, chimneys, bay windows, gables, trellises, cornices, siding, trim and other extensions of buildings and the like); and the placement of any mechanical equipment or utility facilities and the like.

Section 6. Easements of Access for Repair and Maintenance: The Declarant, the Association, and each Owner shall have a blanket, perpetual easement and right of access over, across, in and to the Common Area and every Lot to be exercised from time to time and at reasonable hours as may be necessary to perform their respective maintenance and repair obligations as more fully set forth in this Declaration. Any damage caused to the Common Area or any other Lot or Improvement in the exercise of the rights granted hereunder shall be promptly repaired at the expense of the one causing such damage. The perpetual right of access over and upon said Lots and Common Area may not be terminated nor extinguished without the written

consent of all Owners, the Association, the Declarant for so long as it owns any Lot subject to this Declaration, and any and all parties having any interest in the Properties.

## **ARTICLE V: IRRIGATION WATER SUPPLY SYSTEM**

Section 1. Irrigation Water Supply System: All Lots and Common Area shall be connected to a pressurized irrigation water system ("Irrigation Water Supply System") to be constructed by Declarant and owned and operated by the Association in accordance with the following provisions:

A. The City of Kuna will supply the irrigation water to the Subdivision. Each Owner shall be responsible to pay the charges and assessments levied by the City of Kuna.

B. Use of the water delivered through the Irrigation Water Supply System shall be subject to such rules and regulations as may from time to time be adopted by the City of Kuna or the Association.

C. The Association shall be responsible for the maintenance and repair of the Irrigation Water Supply System from its point of connection to the pipelines owned by the City of Kuna, including, without limitation, the operation, maintenance, repair or replacement of any component of the sprinkler irrigation system located on the Common Area and all Building Lots, provided however, that each Owner shall be responsible for the cost of any repair or maintenance necessitated by the negligence or willful misconduct of an Owner or such Owners invitees, tenants or other persons occupying such Owner's Dwelling Unit.

Section 2. Easement: Declarant reserves to itself, its agents, contractors, subcontractors and employees, successors and assigns, and declares, grants and conveys to the Association a nonexclusive easement as depicted on the Plat, for construction, operation, maintenance, repair and replacement of the pressurized Irrigation Water Supply System.

## **ARTICLE VI: MAINTENANCE RESPONSIBILITY**

Section 1. Association Responsibility: The Association shall be responsible to provide for the operation, maintenance, repair and replacement of the (a) Common Areas and any Improvements located thereon or otherwise described herein as being the Association's responsibility, including, without limitation, the parking lot together with any associated drainage facilities, sidewalks, pathways, lighting, landscaping, benches, fountains, statuary and other decorative elements located thereon, (b) all directional and community identification signage, (c) the drainage areas, seepage beds and related facilities described in Article IV, Section 2, above, (d) the Irrigation Water Supply System not owned and operated by the City of Kuna and any other Improvement or element of the Properties described herein as being the Association's responsibility. Responsibility for maintenance of landscape plantings, trees and lawn areas as required in this Section 1 shall include responsibility for watering the same as needed to maintain them in a healthy condition, free from weeds and other noxious plant materials, and not permitting grasses to exceed four inches (4") in height. It shall also include responsibility for removal and replacement of diseased or dead trees, shrubs and other landscaping, subject to obtaining any required tree removal permit from the local municipal authority and the terms of Article IX of this Declaration. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner, his family, guests, invitees, tenants,

employees, agents or contractors the costs of such maintenance or repairs shall be assessed to such Owner as set forth in Article III, Section 3, Paragraph D, above. Declarant hereby grants and conveys to the Association an easement for ingress, egress and maintenance as may be reasonably necessary to perform the maintenance duties of the Association.

Section 2. Owner's Responsibility: Each Owner shall at all times keep his or her Building Lot(s) and Improvements in good and attractive condition, in good repair, and in compliance with all applicable covenants and municipal ordinances, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to Section 1 above or any other provisions of this Declaration. In the event of damage or destruction of an Improvement by fire or other casualty, the owner must complete repair and/or replacement thereof within one hundred eighty (180) days of the damage or destruction, subject to reasonable delays caused by inclement weather. All such reconstruction shall first be approved by the Architectural Control Committee as provided in Article IX, below, and shall conform in all respects with the provisions of this Declaration, including, without limitation, all easements set forth or described herein.

Section 3. Failure of Owner to Maintain: If any Owner fails to properly perform his or her maintenance responsibility, the Association may, but is not obligated to, perform such maintenance responsibilities on behalf of such Owner and assess the Owner for a Limited Assessment in accordance with Article III, Section 3 of this Declaration; provided, however, that except when entry is required due to an emergency situation, the Association shall provide the Owner with at least fifteen (15) days prior written notice of the Owner's failure and an opportunity to cure the problem prior to entry.

## **ARTICLE VII: PROPERTY USE RESTRICTIONS**

The following restrictions shall be applicable to the Properties and shall be for the benefit of and limitation upon all present and future Owners of said Properties, or of any interest therein.

Section 1. Lot Use: Lots shall only be used for residential or townhome purposes as applicable to its respective lot. No trade, craft, business, profession, commercial, or similar activity of any kind shall be conducted on any Lot, and no goods, equipment, vehicles, materials, or supplies used in connection with any trade, service, or business shall be kept or stored on any Lot. Nothing in this Section 1 shall be deemed to prohibit (a) activities relating to the sale of residences, (b) the right of Declarant or any contractor or home builder to construct improvements on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any Dwelling Unit as a sales office or model home for purposes of sales in the Subdivision, or (c) the right of the Owner of a Lot to maintain such Owner's personal business or professional library, keep such Owner's personal, business or professional records or accounts in such Owner's residence.

Section 2. Animals: No animals, livestock or poultry of any kind shall be raised, bred or kept on any part of said Properties, except that two dogs (excluding any dog that has been used or trained for dog fighting or which has a history of aggressive behavior or biting), cats or other household pets may be kept within a Dwelling Unit or within a fenced area as may be approved by the Architectural Control Committee. Any animals outside a Dwelling Unit or fenced area must be on leashes, and the Owner or custodian of the animal shall be responsible for the

immediate cleanup of the animal's droppings. The term "fenced area" as used in this paragraph shall be interpreted to include any electronic pet containment system; provided, however, that the boundary of any such system shall be approved by the Architectural Control Committee.

Section 3. Garbage and Refuse Disposal: No part of the Properties shall be used or maintained as a dumping ground for rubbish, recycling, or other waste. All garbage, recycling and other waste shall be deposited in a sanitary container provided by the City of Kuna or other garbage and disposal services available to the Association. All trash and/or recycling cans supplied to a Dwelling Unit must be stored behind a fenced area or garage.

Section 4. Nuisance: No noxious, offensive, or unsightly conditions (including but not necessarily limited to sights and sounds) shall be permitted upon any part of said Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. All exterior lighting shall be placed in such a manner to minimize glare and excessive light spillage onto neighboring Lots and any changes in such lighting must be approved in advance by the Architectural Control Committee.

Section 5. Residing in Outbuildings: No trailer, truck camper, tent, garage, barn, shack or other outbuildings shall at any time be used as a residence temporarily or permanently on any part of said Properties.

Section 6. Antennas: Antennas, satellite dishes, or other devices for the transmission or reception of television, radio or electric signals or any other form of electromagnetic radiation shall not be erected on any Lot except as may be approved by the Architectural Control Committee.

Section 7. Rental Restrictions: Subject to the provisions of Article III, Section 6, above, an Owner shall be entitled to rent or lease his or her Dwelling Unit for no less than a 30-day term, subject to the following:

A. Written Rental Agreements. A written rental or lease agreement is required specifying that: (i) the tenant shall be subject to all provisions of this Declaration and the Association's Bylaws and any rules and regulations adopted by the Association, and (ii) failure to comply with any provision of this Declaration, the Association's Bylaws and any rules and regulations adopted by the Association shall constitute a default under the rental agreement.

B. Tenant Must Be Given Documents. The Owner must give each tenant a copy of this Declaration, the Association's Bylaws and any rules and regulations adopted by the Association.

C. Owner Responsibility. The Owner shall be responsible for any violations by his/her tenants of this Declaration, the Association's Bylaws and any rules and regulations adopted by the Association and shall be solely responsible for either correcting or eliminating such violations.

Section 8. Fences: No fences shall be constructed on any Lot except as may be approved, in advance, by the Architectural Control Committee as to design, materials, color, height and location. No existing fence may be removed except with the prior approval of the Architectural Control Committee.

Section 9. Drilling and Exploration: No oil or mining exploration or development of any kind or nature nor any structures in connection therewith shall be permitted to be erected, maintained or used on any Lot and no minerals shall be permitted to be extracted on any Lot.

Section 10. Signs: No sign of any kind may be kept or placed upon any Lot or mounted, painted or attached to any Improvement upon such Lot so as to be visible from public view or mounted on any vehicle or trailer parked or driven in the Subdivision or carried by any person or by any other means displayed within the Subdivision except as provided below:

A. "For Sale" or "For Rent" Signs. An Owner may erect one (1) sign not exceeding two (2) feet by three (3) feet in dimension, fastened only to a stake in the ground and extending not more than three (3) feet above the surface of the ground advertising the property for sale or rent.

B. Declarant's Signs. Signs or billboards may be erected by Declarant and are exempt from the provisions of this Section.

C. Political Signs. Political signs may be erected upon a Lot by the Owner of such Lot advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than ninety (90) days in advance of the election to which they pertain and are removed within fifteen (15) days after the election. The Association may adopt rules as to the size, place, number, and manner of display pursuant to Idaho Code 55-115.

D. Subdivision Identification Signs. Signs, monumentation or billboards may be erected by Declarant to identify the Subdivision, with approval from the local jurisdictional authority, if applicable.

E. Commercial Vehicle Emblems. Vehicles displaying commercial emblems may be kept or parked on the Properties only as provided in Section 13, below.

Section 11. Subdividing: No Lot may be further subdivided, nor may any easement or other interests therein less than the whole be conveyed by the Owner thereof; provided, however, that nothing herein shall be deemed to prohibit an Owner from transferring and selling a Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property.

Section 12. Parking Rights: All parking where allowed in common areas shall be on a first-come, first-serve basis. No campers, boats, boat trailers, recreational vehicles, recreational trailers, or other non-passenger vehicles, equipment, implements, or accessories may be stored or kept on the Properties at any time. There shall be no parking of any vehicles and/or equipment (i) anywhere on the Properties except in marked parking spaces, or (ii) in areas prohibited by the applicable fire authority.

Section 13. Mailboxes: Mailboxes shall be provided for each Dwelling Unit in one or more clusters to be constructed and located by Declarant in consultation with the Postal Service. All such mailbox facilities shall be maintained by the Association or the Postal Service.

Section 14. Exterior Holiday Decorations: Lights or decorations may be erected on the exterior of the Residential Structures in commemoration or celebration of publicly observed holidays

provided that such lights or decorations do not unreasonably disturb the peaceful enjoyment of adjacent Owners or occupants by illuminating bedrooms, creating noise or attracting sightseers. All lights and decorations that are not permanent fixtures of the Residential Structures or have been properly approved as permanent improvements by the Architectural Control Committee may be installed thirty (30) days prior to the holiday celebration and shall be removed within thirty (30) days after the holiday has ended.

Section 15. Porches, Patios, Decks and Balconies: No porch, patio, deck or balcony constructed with or on any Residential Structure may be enclosed unless first approved by the Architectural Control Committee. All porches, patios, decks and balconies shall be kept in a neat and attractive condition. No porch may be used for the storage of an Owner's or occupant's personal property, including, without limitation, bicycles; provided, however, that outdoor furniture, potted plants and other decor may be kept for use thereon.

## **ARTICLE VIII: BUILDING RESTRICTIONS**

Section 1. Building Restrictions: All Residential Structures shall conform to the architectural schematics approved by the City of Kuna. No Residential Structure shall be erected, altered, placed or permitted to remain on any Lot other than those which are in compliance with the approved schematics and as approved by the Architectural Control Committee in accordance with the provisions of Article IX, below.

Section 2. Setbacks: All improvements must be constructed or maintained on a Lot within the minimum building setbacks as set forth on the Plat or as otherwise required by the applicable governmental agency having jurisdiction.

Section 3. Landscaping: Each Building Lot, excluding Lots 32-39, Block 1, Lots 41-48, Block 1 and Lots 50-53, Block 1 shall have the front yard landscaped by the builder as approved by the Architectural Control Committee in accordance with the provisions of Article IX, below. Once the home/lot has been sold to the new owners, they will have 120 days to finish the landscape of the backyard. A plan to finish the backyard landscape must be submitted and approved by the Architectural Control Committee.

Section 4. Grading and Drainage: The Owner of any Lot within the Properties in which grading or other work has been performed pursuant to a grading plan approved under applicable provisions of local code or by the Association shall maintain and repair all graded surfaces and erosion control prevention devices, retaining walls, drainage structures, means or devices which are not the responsibility of the Ada County Highway District or other public agency, and plantings and ground cover installed or completed thereon. Each Owner shall be responsible to assure that the finished grade and elevation of his Lot is properly constructed so as to prevent the migration or accumulation thereon of drainage waters from the Common Area or any other Lots within the Properties except to the extent contemplated by the provisions of Article IV, Section 2, above. The Declarant shall have no liability or responsibility for any damages which may be caused as a result of the failure of an Owner to comply with the provisions of this Section.



## ARTICLE IX: ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: In order to protect the quality and value of the homes built on the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee is hereby established consisting of three or more members to be appointed by the Declarant for so long as it owns any Lot and thereafter by the Board.

Section 2. Approvals Required: No building, fence, wall, patio cover, window awning or other structure or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, location and such other detail as the Architectural Control Committee may require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its opinion, are not suitable or desirable for any reason, aesthetic or otherwise. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement, structure or alteration. Actual construction shall comply substantially with the plans and specifications approved.

Section 3. Submissions: Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably requested by the Architectural Control Committee including, without limitation, the following:

A. Site Plan: A site plan showing the location of buildings and all other structures and improvements, including fences and walls on the Lot, Lot drainage and all setbacks and other pertinent information related to the improvements.

B. Building Plan: A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicate, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used. Garage, accessory and outbuildings to be located on a Lot shall be architecturally and visually compatible and harmonious with the principal building on the Lot as to style and exterior colors and shall not be higher than ten feet above the roofline of the principal building on the Lot.

C. Landscape Plan: A complete landscape plan for that portion of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, free-standing exterior lights, driveways, parking areas and walkways.

Section 4. Rules and Regulations/Design Guidelines: The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such design guidelines as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations and design guidelines may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations or design guidelines shall not form the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a fee schedule for an architectural review fee to be paid by each owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to its completion, including inspections which may be required.

Section 6. Variances: The Architectural Control Committee may authorize variances from compliance with any of the architectural provisions of this Declaration, including restrictions upon height, size, floor area or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may require. Such variances must be evidenced in writing, must be signed by at least two (2) members of the Architectural Control Committee, and shall become effective upon recordation in the official records where this Declaration is recorded. If such variances are granted, no violation of the covenants, conditions or restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and particular provision hereof covered by the variance, nor shall it effect in any way the Owner's obligation to comply with all governmental laws and regulations effecting such Owner's use of the Lot, including but not limited to zoning ordinances or requirements imposed by any governmental or municipal authority.

Section 7. Waiver: The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

Section 8. Liability: Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

Section 9. Governmental Approvals: Approval by the Architectural Control Committee shall not imply that Improvements meet any applicable federal, state and/or local laws and ordinances, and does not assure approval of the Improvements by any governmental or quasi-governmental agency, board or commission. All Owners shall insure that such Improvements meet any and all applicable federal, state and/or local laws and ordinances and have been properly approved.

Section 10. Construction and Sales Period Exception: During the course of construction of any permitted Improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Residential Structures; provided that, during the course of such construction and sales, nothing shall be done which will result in a violation of these restrictions upon completion of construction and sale. Further, Declarant shall have the right to select and use any individual Dwelling Units owned by it as models for sales purposes and may, by written authorization, permit other builders to use Dwelling Units owned by them as such models.

Section 13. Exemption of Declarant: The Declarant and any entity affiliated with Declarant shall be exempt from the requirements of this Article IX. For purposes of this Section, an entity affiliated with Declarant shall be deemed to include any entity owned by Declarant, any entity which owns Declarant, and any entity which shares any common ownership with Declarant.

## **ARTICLE X: INSURANCE AND BOND**

Section 1. Required Insurance: The Association shall obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Idaho. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time.

A. A multi-peril-type policy covering any Common Area improvements, providing at a minimum fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use on a replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based upon replacement cost).

B. A comprehensive policy of public liability insurance with limits of liability of at least \$1,000,000 for bodily injury and property damage covering all of the Common Areas. Such insurance policy shall contain a severability of interest endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. The scope of coverage must include all other coverage in the kinds and amounts required by private institutional mortgage investors for projects similar in construction, location and use.

C. Liability insurance affording coverage for the acts, errors and omissions of its directors, officers, agents and employees, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board in such amount as may be reasonable in the premises.

Section 2. Optional Insurance: The Association may obtain and keep in full force and effect at all times bonds and insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the protection of the properties, including any personal property of the Association located thereon, its directors, officers, agents, employees and association funds.

Section 3. Additional Provisions: The following additional provisions shall apply with respect to insurance:

A. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgages.

B. Each policy of insurance obtained by the Association shall, if possible, provide: A waiver of the insurer's subrogation rights with respect to the Association, its officers, the Owners and their respective servants, agents and guests; that it cannot be canceled, suspended or invalidated due to the conduct of any agent, officer or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

C. All policies shall be written by a company licensed to write insurance in the State of Idaho.

Section 4. Owner's Insurance: Each owner shall obtain multi-peril casualty and public liability insurance on his Residential Structure and its contents at his own expense.

## **ARTICLE XI: CONDEMNATION**

If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof all compensation, damages, or other proceeds therefrom shall be payable to the Association owning the condemned Common Area.

## **ARTICLE XII: ANNEXATION**

Section 1. Time for Annexation; Land Subject to Annexation: Declarant hereby reserves the right to annex any other real property into the subdivision project described herein by recording a Notice of Annexation or Supplemental Declaration particularly describing the real property to be annexed and added to the project created by this Declaration, pursuant to the provisions of this Article.

Upon the recording of a Notice of Annexation containing the provisions set forth in this Section (which Notice may be contained within a Supplemental Declaration affecting such property), except as may be provided for therein, the covenants, conditions and restrictions contained in this Declaration shall apply to the added land in the same manner as if it were originally covered by this Declaration and originally constituted a portion of the project; and thereafter, the rights, privileges, duties and liabilities of the Declarant with respect to the added land shall be the same as with respect to the original land, and the rights, privileges, duties and liabilities of the Owners, lessees and occupants of Lots within the added land shall be the same as in the case of the original land, including without limitation, the exercise of such voting rights as are set forth in Article III, Section 2, above. Notwithstanding the foregoing, any Supplemental

Declaration may provide a special procedure for amendment of any specified provision thereof, e.g., by a specified vote of only the owners of Lots within the area subject thereto. Any provision of a Supplemental Declaration for which no special amendment procedure is provided shall be subject to amendment in the manner provided in this Declaration.

Section 2. Procedure for Annexation: Any such real property may be annexed into the project by the recordation of a Notice of Annexation executed by Declarant and containing the following information:

A. A reference to this Declaration, which reference shall state the date of recordation hereof and the Recorder's instrument number or the book and page of the official records of the County where this Declaration is recorded;

B. An exact legal description of the added land;

C. A statement that the provisions of this Declaration shall apply to the added land, except as set forth therein; and

D. A statement of the use restrictions applicable to the annexed property, which restrictions may be the same or different from those set forth in this Declaration.

Section 3. De-Annexation: Declarant (but not any other Owner) may delete all or a portion of the property described in this Declaration and any annexed property from the Properties and from coverage of this Declaration and the jurisdiction of the Association, so long as Declarant is the owner of all such property and provided that a notice of de-annexation is recorded in the official records of the County where this Declaration is recorded in the same manner as a notice of annexation. Members other than Declarant as described above, shall not be entitled to de-annex all or any portion of the Properties except on the favorable vote of all Members of the Association and approval of Declarant so long as Declarant owns any Lot, part, parcel or portion of the Properties.

### **ARTICLE XIII: GENERAL PROVISIONS**

Section 1. Enforcement: The Association or any Owner (including Declarant) or the Owner of any recorded mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. In addition to the foregoing, the Association shall be entitled to impose a monetary penalty, not to exceed the sum of \$100 per day, against an Owner who has caused or permitted a violation of any of the restrictions, conditions or covenants contained herein, provided that: (a) a majority vote by the Board shall be required prior to imposing any fine on an Owner for a violation of any of the restrictions, conditions or covenants contained in this Declaration; (b) written notice by personal service or certified mail of the meeting during which such vote is to be taken shall be made to the Owner at least thirty (30) days prior to the meeting; (c) in the event the Owner begins resolving the violation prior to the meeting, no monetary penalty shall be imposed so long as the Owner continues to address the violation in good faith until fully resolved; and (d) no portion of any monetary penalty may be used to increase the remuneration of any member of the Board or agent of the Board. Any Owner desiring to challenge or contest the monetary penalty imposed as

provided herein, including any claim alleging defective notice, must commence legal action within one (1) year after the date of the imposition of the said penalty. Any monetary penalty imposed as provided herein shall be levied and collected by the Association as a Limited Assessment as provided in Article III, Section 3, above. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Attorney Fees & Costs: In the event the Association or an Owner is required to initiate any action to enforce the provisions of this Declaration, the prevailing party therein shall be entitled to recover from the Owner against whom enforcement is sought, all attorney fees and costs incurred as a consequence thereof, whether or not any lawsuit is actually filed, and if such enforcement action is initiated by the Association, any such attorney fees and costs so incurred shall be added to and become a part of the Assessment to which such Owner's Lot is subject.

Section 3. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 4. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods often (10) years each; provided, however, that except as otherwise provided herein, any of the covenants and restrictions of this Declaration, except the easements herein granted, may, at any time, be amended or terminated by an instrument signed by members entitled to cast not less than sixty six and two thirds percent (66 2/3%) of the votes of membership in the Association; and further provided that no amendment or modification of this Declaration shall be effective to amend, modify, replace, repeal or terminate any rights, powers, reservations, authorities or easements reserved or granted to Declarant herein without the express written consent of Declarant; and further provided that Declarant, acting alone, may amend this Declaration at any time that Declarant owns any real property subject hereto. Any amendment must be recorded.

Section 5. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other person, corporation or other entity which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned, and upon any such person, corporation or other entity evidencing its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of said property.

[SIGNATURES NEXT PAGE]

IN WITNESS WHEREOF, Declarant has caused its name to be hereunto subscribed this \_\_\_\_\_ day of February 22, 2022.

**DECLARANT:**

**Merlin Pointe, LLC**

By: Thomas T. Nicholson  
Thomas T. Nicholson, General Partner

SUBSCRIBED and SWORN to before me this 22 day of February, 2022.



Linda Boots  
Notary Public for Idaho  
Residing in Boise ID  
My Commission Expires: 05/31/25